

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 93-cr-40050-JPG

DAVID REED,

Defendant.

MEMORANDUM AND ORDER

This matter comes before the Court on defendant David Reed's motion for leave to proceed *in forma pauperis* in his appeal of the March 31, 1994, judgment and conviction in this case (Doc. 163).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Reed has already filed a direct appeal of his criminal case (Doc. 126), and the Court of Appeals has affirmed the Court's judgment (Doc. 137). The deadline for filing a notice of appeal of his original judgment has long passed, *see* Fed. R. App. P. 4(b)(1)(A), and a new appeal nearly six years after entry of judgment would be frivolous because it is clearly untimely. No reasonable person could argue that the pending appeal has merit. Therefore, the Court **CERTIFIES** that this appeal is not taken in good faith and accordingly **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 163).

IT IS SO ORDERED.

DATED: February 5, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE